

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

ARCADE JOSEPH COMEAUX, JR.,	§	
	§	
Petitioner,	§	
	§	
v.	§	2:10-CV-289
	§	
RICK THALER,	§	
Director, Texas Dep't of Criminal Justice,	§	
Correctional Institutions Division,	§	
	§	
Respondent.	§	

**REPORT AND RECOMMENDATION TO DISMISS**  
**PETITION FOR A WRIT OF HABEAS CORPUS**

On December 22, 2010, petitioner filed with this Court a petition for a writ of habeas corpus challenging a prison disciplinary proceeding that occurred sometime in December 2009 or January 2010. The disciplinary proceeding took place at the Clements Unit in Potter County, Texas. As of the date the instant habeas application was filed, petitioner was still incarcerated in the Clements Unit.

In order to challenge a prison disciplinary adjudication by way of a federal petition for a writ of habeas corpus, a petitioner must, at a minimum, be eligible for mandatory supervised release and have received a punishment sanction which included forfeiture of previously accrued good-time credits. *See Malchi v. Thaler*, 211 F.3d 953, 958 (5th Cir. 2000). In his habeas application, petitioner indicates he lost good-time credits as a result of the disciplinary proceeding, although he was uncertain as to how many days of good-time credits he lost.

In addition to having lost good-time credits, petitioner must also be eligible for release on mandatory supervision in order to challenge a disciplinary proceeding in this Court. *See id.* Petitioner did not indicate on his habeas corpus petition the offense for which he is incarcerated. The Offender Information Detail maintained by the Texas Department of Criminal Justice, however, indicates petitioner is incarcerated on one conviction for indecency with a child, one conviction for aggravated sexual assault, and two convictions for aggravated assault with a deadly weapon. A prisoner who has committed any one of these four crimes is not eligible for mandatory supervised release. Tex. Gov't Code § 508.149(a)(5), (7), (8). Because petitioner is not mandatory supervised release eligible, he may not challenge a prison disciplinary proceeding by way of a federal petition for a writ of habeas corpus. *See Malchi*, 211 F.3d at 958.

#### **RECOMMENDATION**

It is the RECOMMENDATION of the undersigned United States Magistrate Judge to the United States District Judge that the petition for a writ of habeas corpus filed by petitioner ARCADE JOSEPH COMEAUX JR. be DISMISSED.

#### **INSTRUCTIONS FOR SERVICE**

The United States District Clerk is directed to send a copy of this Report and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 10th day of February, 2011.

  
CLINTON E. AVERITTE  
UNITED STATES MAGISTRATE JUDGE

**\* NOTICE OF RIGHT TO OBJECT \***

Any party may object to these proposed findings, conclusions and recommendation. In the event parties wish to object, they are hereby NOTIFIED that the deadline for filing objections is fourteen (14) days from the date of filing as indicated by the “entered” date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(C), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(E). **Any objections must be filed on or before the fourteenth (14th) day after this recommendation is filed** as indicated by the “entered” date. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(d).

Any such objections shall be made in a written pleading entitled “Objections to the Report and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).